

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESale PRICE
LITIGATION

)
) MDL NO. 1456
) Civil Action No. 01-12257-PBS
) Subcategory No. 03-10643

THIS DOCUMENT RELATES TO:

The City of New York, et al.

v.

Abbott Laboratories, Inc., et al.

)
) Judge Patti B. Saris
)
)
)
)

**NOVEMBER 2010 STATUS REPORT ON BEHALF OF
THE CITY OF NEW YORK AND NEW YORK COUNTIES**

The undersigned counsel for the City of New York and New York Counties in the above-captioned action (hereinafter referred to as “plaintiffs”) hereby submit the attached Status Report for November 2010, in accordance with the Court’s June 17, 2004 Procedural Order.

Dated: November 1, 2010

Respectfully submitted,

**City of New York and New York Counties in
MDL 1456 except Nassau and Orange, by**

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**November 2010 Status Report on Behalf of the
City of New York and New York Counties**

Voluntary Dismissal of Claims

On August 30, 2010, plaintiffs served a notice of voluntary dismissal of claims against defendant Medimmune, Inc. *See* Docket no. 7234, Sub-docket 244.

On October 26, 2010 plaintiffs and defendants filed a stipulation of voluntary dismissal of plaintiffs' claims against defendant Biogen Idec, Inc. *See* Docket No. 7277, Sub-docket 251.

On November 1, 2010, the Court entered an order granting plaintiffs' voluntary dismissal of claims against defendants Purdue Pharma L.P., The Purdue Frederick Co., and the Purdue Pharma Co. *See* Docket No. 7287.

Plaintiffs' Expert Disclosures

On October 29, 2010, plaintiffs served the Fed.R. Civ. P. 26(a)(2)(B) expert reports of Harris L. Devor, C.P.A., (Merck and TAP) and Jeffrey J. Leitzinger, Ph.D., (Mylan, Par, Alpharma-Purepac, and Sandoz).

On November 2, 2010, by agreement with defendants, plaintiffs will serve the Fed. R. Civ. P. 26(a)(2)(B) expert report of Stephen W. Schondelmeyer, Pharm.D, Ph.D. (covering same defendants as identified above).

Discovery

1. Motion to Compel Discovery from Defendant Merck

On September 4, 2009, plaintiffs filed their Motion to Compel Discovery from Defendant Merck for all at-issue drugs with annual AMP/AWP spreads over 30 percent. *See* Docket. No. 6487; Sub-docket. No.158.

On October 5, 2009, Merck filed its opposition to plaintiffs' motion to compel. *See* Docket No. 6572, Sub-docket No. 168.

On October 23, 2009, plaintiffs filed their Motion for Leave to File Reply Memorandum in Further Support of Plaintiffs' Motion to Compel Discovery from Defendant Merck & Co., Inc., and Exhibits to the Declaration of Joanne M. Cicala in Support Thereof Under Seal. *See* Docket No. 6609, Sub-docket No. 175.

On June 3, 2010, plaintiffs filed their Motion for Expedited Hearing re Motion to Compel Discovery from Defendant Merck. *See* Docket No. 7124, Sub-docket No. 237.

On June 21, 2010, the above motion was referred to Magistrate Judge Marianne B. Bowler. *See* June 21, 2010 electronic entry. The motion remains *sub-judice*.

Plaintiffs will be filing a renewed motion to expedite on or before November 3, 2010.

2. Defendants' Motion to Compel the production of privileged documents withheld by New York State Department of Health ("NY DOH")

On December 23, 2009, defendants filed a motion to compel production of all documents which NY DOH has withheld on the basis of the deliberative process privilege. *See* Docket No. 6810, Sub-docket No. 191.

On January 20, 2010, the office of the New York Attorney General filed its Opposition to Defendants' Joint Motion to Compel the Production of Documents from NY DOH. *See* Docket No. 6852; Sub-docket No. 197.

On June 21, 2010, the motion was referred to Magistrate Judge Marianne B. Bowler. *See* June 21, 2010 electronic entry. It remains *sub-judice*.

CERTIFICATE OF SERVICE

I, Kathryn Allen, hereby certify that on the 1st day of November, 2010, I caused a true and correct copy of the above November 2010 Status Report for the City of New York and New York Counties to be delivered to counsel of record for defendants by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL No. 1456.

Dated: November 1, 2010

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